

HOUSE No. 795

By Mr. O’Flaherty of Chelsea, petition of Jarrett T. Barrios and Eugene L. O’Flaherty for legislation relative to the protection of certain real estate from the removal of minerals. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO NON-USE OF ANCIENT PROFITS A PRENDRE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 184 of the General Laws is hereby
2 amended by adding the following section:

3 Section 36. As used in this section the following words shall
4 have the following meanings:

5 “Profit à prendre”, a right enjoyed by a person in gross or as
6 owner or lessee or occupant of land to enter another’s land and
7 take from the surface or from under the surface thereof soil, sand,
8 rock, gravel, clay or any type of mineral, oil or gas for the benefit
9 of that person or that person’s land.

10 “Recorded notice”, a written instrument executed and acknowl-
11 edged by a person benefiting from a profit à prendre, whether in
12 gross or as owner, lessee or occupant of land, containing that per-
13 son’s mailing address, identifying the place of record of the
14 instrument or will creating the profit à prendre, describing the
15 burdened land and, upon recording, noted in the margin of the
16 latest recorded deed or deeds, if more than one, of the burdened
17 land or, in the case of registered land, noted in the memorandum
18 of encumbrances of the outstanding certificate or certificates of
19 title covering the burdened land.

20 “Person”, shall include any representative appointed by a pro-
21 bate court in connection with the estate of a deceased person or
22 the disability of a person, which person, but for death or disability,
23 would be entitled to record a notice, and shall also include corpo-

24 rations, companies, societies, associations, partnerships and other
25 organizations.

26 A description of burdened land shall be sufficient if it specifies
27 the city or town in which the land lies and the place of record in
28 the registry of deeds where there is a recorded or registered plan
29 or instrument giving the boundaries of the land, and identifies the
30 land with reference to that plan or instrument and, if the land is
31 registered, specifies the then outstanding certificate or certificates
32 of title thereof.

33 No title to land shall be subject to a profit à prendre after the
34 expiration of fifty years from the date of recording in the appro-
35 priate registry of deeds of the instrument, or from the date of
36 allowance of a will, in either case creating the profit à prendre,
37 unless there is recorded notice thereof as required by this section
38 within said fifty years. Said profit a prendre may be extended for
39 additional terms, provided that there is recorded notice thereof as
40 required by this section before the expiration of the fifty-year
41 period commencing on the date of the prior recorded notice.

1 SECTION 2. If the fiftieth anniversary of the recording of an
2 instrument, or of the allowance of a will, in either case creating a
3 profit a prendre, would occur prior to the third anniversary of the
4 effective date of this act, the land encumbered by such profit a
5 prendre shall continue to be so encumbered until said third
6 anniversary date, but not thereafter unless there is recorded notice
7 thereof as required by section 1 on or prior to said third anniver-
8 sary date. This act shall take effect on July 1, 2005.